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Safe Products for Californians, LLC  
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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**

10  
11 SAFE PRODUCTS FOR CALIFORNIANS, ) No. 19CV340910  
LLC, )  
12 ) **[PROPOSED] CONSENT JUDGMENT**  
Plaintiff, )  
13 ) (Health & Safety Code § 25249.5, *et seq.*)  
vs. )  
14 )  
TERRA ORIGIN, INC., et al.; )  
15 )  
16 Defendants. )  
17 )  
18

19 **1. INTRODUCTION**

20 **1.1 Parties**

21 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff  
22 Safe Products for Californians, LLC (“SPFC”) and defendant Terra Origin, Inc. (“Terra Origin”).  
23 SPFC and Terra Origin are each referred to individually as a “Party” and collectively as the  
24 “Parties.” Defendants T.J. Maxx of CA, LLC and HomeGoods, Inc. (collectively “TJX,” and  
25 together with Terra Origin, collectively referred to as “Defendants”) are intended third-party  
26 beneficiaries of this Consent Judgment.

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**1.2 SPFC**

SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

**1.3 Terra Origin**

SPFC alleges, and, for purposes of this Consent Judgment only, Terra Origin does not dispute, that Terra Origin employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

**1.4 General Allegations**

SPFC alleges that powdered dietary supplements that Defendants manufacture, import, sell and/or distribute for sale in California cause exposure to lead and lead compounds (hereinafter referred to as “lead”) and cadmium and that they do so without providing the health hazard warning that SPFC alleges is required by Proposition 65.

**1.5 Product Description**

The products that are covered by this Consent Judgment are powdered dietary supplements manufactured, imported, distributed, sold and/or offered for sale by Terra Origin, identified in SPFC’s Notice of Violation as Powdered Dietary Supplements, including but not limited to: “Plant Protein - Chocolate,” UPC# 8-57668-00717-5, “Bone Broth Protein - Vanilla,” UPC# 8-57668-00710-6; “Greens Superfoods - Mint,” UPC# 8-57668-00705-2; “Greens Superfoods - Coffee,” UPC# 8-57668-00722-9; “Reds Superfoods - Kiwi Strawberry,” UPC# 8-57668-00706-9; “Bone Broth Protein - Chocolate,” UPC# 8-57668-00711-3; “Whey Protein - Chocolate,” UPC# 8-57668-00708-3; “Tropical Superfoods - Organic Coconut Water Powder,” UPC# 8-57668-00707-6; “Plant Protein - Vanilla,” UPC# 8-57668-00716-8; and “Whey Protein - Vanilla,” UPC# 8-57668-00709-0, that are manufactured, imported, distributed, sold and/or offered for sale by Terra Origin and/or its customers in the state of California, hereinafter the “Covered Products.”

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**1.6 Notice of Violation**

On or about September 5, 2018, SPFC served Defendants, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Defendants violated Proposition 65 when they failed to warn their customers and consumers in California that the Covered Products expose users to cadmium and lead and lead compounds. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.7 Complaint**

On January 9, 2019, SPFC commenced the instant action against Defendants for the alleged violations of Proposition 65 that are the subject of the Notice (“Complaint”).

**1.8 No Admission**

Terra Origin denies the material, factual and legal allegations contained in the Notice and Complaint and maintains that, to the best of its knowledge, all products that it has manufactured, imported, sold and/or distributed for sale in California, including the Covered Products, have been and are in compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an admission by Terra Origin of any fact, finding, and issue of law or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Terra Origin of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Terra Origin. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Consent Judgment.

**1.9 Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Terra Origin as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

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1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean thirty (30)  
3 days from the date on which the Court enters this Consent Judgment.

4           **2. INJUNCTIVE RELIEF**

5           **2.1 Product Removal**

6           As of the Effective Date, Terra Origin shall be permanently enjoined from manufacturing  
7 for sale in the State of California, “Distributing into the State of California,” or directly selling  
8 in the State of California, any Covered Products manufactured after the Effective Date which  
9 expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day  
10 and/or “Daily Cadmium Exposure Level” of more than 4.1 micrograms per day, unless it meets  
11 the warning requirements under section 2.3.

12           **2.1.1** As used in this Consent Judgment, the term “Distributing into the State of  
13 California” shall mean to directly ship a Covered Product into California for sale in California  
14 or to sell a Covered Product to a distributor Terra Origin knows or has reason to know will sell  
15 the Covered Products in California.

16           **2.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall  
17 be measured in micrograms, and shall be calculated using the following formula: micrograms of  
18 lead per gram of product, multiplied by grams of product per serving of the product (using the  
19 largest serving size appearing on the product label), multiplied by servings of the product per  
20 day (using the largest number of recommended daily servings appearing on the label), which  
21 equals micrograms of lead exposure per day. If the label contains no recommended daily  
22 servings, then the number of recommended daily shall be one.

23           **2.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level”  
24 shall be measured in micrograms, and shall be calculated using the following formula:  
25 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the  
26 product (using the largest serving size appearing on the product label), multiplied by servings of  
27 the product per day (using the largest number of recommended daily servings appearing on the  
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1 label), which equals micrograms of cadmium exposure per day. If the label contains no  
2 recommended daily servings, then the number of recommended daily shall be one.

3 **2.2 Reformulated Covered Products**

4 Reformulated Covered Products are Covered Products manufactured after the Effective  
5 date for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per  
6 day and/or “Daily Cadmium Exposure Level” is no more than 4.1 micrograms of cadmium per  
7 day as determined by the quality control methodology described in Sections 2.1.2 and 2.1.3.

8 **2.3 Clear and Reasonable Warnings**

9 For any Covered Products manufactured after the Effective Date that do not qualify as  
10 Reformulated Covered Products and are directly sold or offered for sale in California by Terra  
11 Origin after the Effective Date, Terra Origin shall only sell or offer said non-reformulated  
12 Covered Products for sale in California when accompanied with one of the following warnings:

13 **OPTION 1:**

14 **WARNING:** Consuming this product can expose you to chemicals including [lead]  
15 [and] [cadmium] which [is] [are] known to the State of California to cause [cancer and] birth  
16 defects or other reproductive harm. For more information go to:  
17 [www.P65warnings.CA.gov/food](http://www.P65warnings.CA.gov/food)

18 OR:

19 **OPTION 2:**

20 **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

21 In connection with providing a cancer warning for lead and lead compounds, Terra  
22 Origin shall use the phrase “cancer and” in the warning if Terra Origin has reason to believe that  
23 the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant  
24 to the quality control methodology set forth in Section 2.1.2. Terra Origin also may include the  
25 reference to cancer if Terra Origin has reason to believe that another Proposition 65 chemical is  
26 present which may require a cancer warning. As identified in the brackets, the warning shall  
27 appropriately reflect whether there is lead or cadmium present in each of the Covered Products.

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1 The words “chemicals including” may be deleted from the warning content if the warning is  
2 being provided for an exposure to a single chemical.

3 The warning provided pursuant to Section 2.3 shall be prominently affixed to or printed  
4 on the Covered Product’s packaging or label with such conspicuousness, as compared with other  
5 words, statements, or designs as to render it likely to be read and understood by an ordinary  
6 individual under customary conditions of purchase or use. If the warning is provided on the label,  
7 it must be set off from other surrounding information and enclosed in a box. In addition, for any  
8 Covered Product sold over the internet where a California delivery address is indicated, the  
9 warning shall be provided either by including the warning on the product display page, by  
10 otherwise prominently displaying the warning to the purchaser during the checkout process prior  
11 to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27  
12 of the California Code of Regulations. An asterisk or other identifying method must be utilized  
13 to identify which products on the checkout page are subject to the warning.

14 In the event Terra Origin provides the warning pursuant to OPTION 2, above, the entire  
15 warning must be in a type size no smaller than the largest size used for other consumer  
16 information on the product, and in no case shall the warning appear in a type size smaller than  
17 6-point type. For all warnings, the word “WARNING” shall be in all capital letters in bold print.  
18 Any additional statements in the warning shall comply with Title 27, California Code of  
19 Regulations, Section 25601(e).

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

22 Pursuant to Health and Safety Code section 25249.7(b), Terra Origin shall pay civil  
23 penalties in the amount of \$1,000.00. The penalty payment shall be allocated according to Health  
24 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the  
25 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining  
26 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting Terra  
27 Origin’s penalty payment under this Consent Judgment to OEHHA. Within five (5) business  
28 days of the Court’s approval of this Consent Judgment, Terra Origin shall issue a check payable

1 to “Safe Products for Californians, LLC” in the amount of \$250.00, and a check payable to  
2 OEHHA in the amount of \$750.00. These penalty payments shall be delivered to the address  
3 listed in Section 3.3 below.

### 4 **3.2 Reimbursement of Attorneys’ Fees and Costs**

5 For all work performed as a result of investigating, bringing this matter to Defendants’  
6 attention and negotiating a settlement in the public interest through the mutual execution of this  
7 Consent Judgment and the Court’s approval of the same, but exclusive of fees and costs on  
8 appeal, if any, Terra Origin shall reimburse SPFC and its counsel \$20,000.00. The Parties  
9 negotiated this resolution of the compensation due to SPFC and its counsel under general  
10 contract principles and the private attorney general doctrine codified at California Code of Civil  
11 Procedure § 1021.5. Terra Origin’s payment shall be due within five (5) business days of the  
12 Court’s approval of this Consent Judgment and delivered to the address in Section 3.3 in the  
13 form of a check payable to “Safe Products for Californians, LLC.” The reimbursement shall  
14 cover all fees and costs incurred by SPFC investigating, bringing this matter to Defendants’  
15 attention, litigating, and negotiating a settlement of the matter in the public interest.

### 16 **3.3 Payment Procedures**

17 The payments pursuant to Sections 3.1 and 3.2 shall be delivered to the following  
18 address:

19 Safe Products for Californians, LLC  
20 Attn: Moore Law Firm  
21 332 North Second Street  
22 San Jose, California 95112

23 If for any reason this Consent Judgment is not entered by the Court within one year of  
24 the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with Terra  
25 Origin about mutually agreeable steps the Parties can take to ensure entry of the Consent  
26 Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly return to  
27 Terra Origin any and all monies paid by Terra Origin herein under Sections 3.1 and 3.2 upon  
28 Terra Origin’s written request.

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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 SPFC's Release of Proposition 65 Claims**

3 This Consent Judgment is a full, final and binding resolution between SPFC, on behalf  
4 of itself and in the public interest, its past and current agents, representatives, attorneys,  
5 successors, and assignees, and Terra Origin, its parents, subsidiaries, affiliated entities under  
6 common ownership, directors, officers, agents, employees, attorneys, and each entity to whom  
7 Terra Origin directly or indirectly distributes or sells Covered Products, including, but not  
8 limited to, TJX, downstream distributors, wholesalers, customers, retailers, franchisees,  
9 cooperative members, marketplace hosts and licensees (collectively, "Releasees"), from all  
10 claims for any violation of Proposition 65 through the Effective Date that were or could have  
11 been asserted by SPFC relating to the Covered Products. Compliance with the terms of this  
12 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
13 cadmium and/or lead and lead compounds from the Covered Products, as set forth in the Notice.  
14 The Parties further understand and agree that this Section 4.1 release shall not extend upstream  
15 to any entities that manufactured the Covered Products or any component parts thereof, or any  
16 distributors or suppliers who sold the Covered Products or any component parts thereof to Terra  
17 Origin.

18 **4.2 SPFC's Individual Release of Claims**

19 SPFC, on behalf of itself, its past and current agents, representatives, attorneys,  
20 successors, and assignees, provides a release herein which shall be effective as a full and final  
21 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
22 attorneys' fees, damages, losses, claims, liabilities, and demands of SPFC of any nature,  
23 character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising  
24 out of alleged or actual exposures to cadmium and/or lead and lead compounds in the Covered  
25 Products manufactured, imported, distributed, or sold by Terra Origin prior to the Effective Date.  
26 The Parties further understand and agree that this Section 4.2 release shall not extend upstream  
27 to any entities that manufactured the Covered Products, or any component parts thereof, or any  
28 distributors or suppliers who sold the Covered Products, or any component parts thereof to Terra



1 Origin. Nothing in this section affects SPFC's right to commence or prosecute an action under  
2 Proposition 65 against a Releasee that does not involve Terra Origin's Covered Products.

3 In further consideration of the promises and agreements herein contained, and for the  
4 payments to be made pursuant to Section 3, SPFC, on behalf of itself, its past and current agents,  
5 representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives  
6 any right to institute, participate in, directly or indirectly, any form of legal action and releases  
7 all claims that it may have, including without limitation, all actions and causes of action in law  
8 and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert  
9 fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of  
10 the Releasees of any nature, character, or kind, whether known or  
11 unknown, suspected or unsuspected, limited to and arising out of the allegations made in the  
12 Notice and Complaint.

#### 13 **4.3 Terra Origin's Release of SPFC**

14 Terra Origin, on behalf of itself, its past and current agents, representatives, attorneys,  
15 successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and  
16 other representatives, for any and all actions taken or statements made (or those that could have  
17 been taken or made) by SPFC and their attorneys and other representatives, whether in the course  
18 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter  
19 with respect to the Covered Products.

#### 20 **4.4 Waiver of Civil Code Section 1542**

21 With respect to the foregoing waivers and releases in this Settlement Agreement, SPFC  
22 hereby specifically waives any and all rights and benefits which it now has, or in the future  
23 may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,  
24 which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
27 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
28 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
OR HER SETTLEMENT WITH THE DEBTOR.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
4 year after it has been fully executed by all Parties, unless the Parties mutually agree to extend  
5 that time period due to what they mutually agree are reasonably unforeseeable circumstances.  
6 SPFC and Terra Origin agree to support the entry of this agreement as a judgment, and to obtain  
7 the Court’s approval of their settlement in a timely manner. The Parties acknowledge that,  
8 pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required  
9 for judicial approval of this Consent Judgment, which motion SPFC shall draft and file and Terra  
10 Origin shall support, appearing at the hearing if so requested.

11 **6. SEVERABILITY**

12 If, subsequent to the execution of this Consent Judgment as a judgment, any provision of  
13 this Consent Judgment is held by a court to be unenforceable, the validity of the remaining  
14 provisions shall not be adversely affected.

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the state of  
17 California and apply within the state of California. In the event that Proposition 65 is repealed  
18 or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of  
19 this Consent Judgment are rendered inapplicable or no longer required as a result of any such  
20 repeal or preemption or rendered inapplicable by reason of law generally as to the Covered  
21 Products, then Terra Origin shall provide written notice to SPFC of any asserted change in the  
22 law and shall have no further injunctive obligations pursuant to this Consent Judgment with  
23 respect to, and to the extent that, the Covered Products are so affected. If the Office of  
24 Environmental Health Hazard Assessment promulgates one or more regulations governing the  
25 provision of Proposition 65 warnings for foods, Terra Origin may comply with such regulations  
26 as to the Covered Products without being deemed in breach of this Consent Judgment. Nothing  
27 in this Consent Judgment shall be interpreted to relieve Terra Origin from any obligation to  
28 comply with any pertinent state or federal toxics control law.

1 **8. NOTICE**

2 Unless specified herein, all correspondence and notices required to be provided pursuant  
3 to this Consent Judgment shall be in writing and: (i) personally delivered, (ii) sent by first-class  
4 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one  
5 Party by the other Party at the following addresses:

6 To Terra Origin:

7 Renee Reynolds  
8 Terra Origin  
9 7 Oser Avenue  
Hauppauge, NY 11788

To SPFC:

Safe Products for Californians, LLC  
c/o Moore Law Firm  
332 North Second Street  
San Jose, California 95112

10 With copy to:

11 Ann G. Grimaldi  
12 Jennifer K. Singh  
13 Grimaldi Law Offices  
14 535 Mission Street, 14<sup>th</sup> Floor  
San Francisco, CA 94105

15 Any Party, from time to time, may specify in writing to the other Party a change of  
16 address to which all notices and other communications shall be sent.

17 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

18 This Consent Judgment may be executed in counterparts and by facsimile or .pdf  
19 signature, each of which shall be deemed an original, and all of which, when taken together,  
20 shall constitute one and the same document.

21 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

22 SPFC agrees to comply with the reporting requirements referenced in Health & Safety  
23 Code section 25249.7(f).

24 **11. MODIFICATION**

25 This Consent Judgment may be modified only by: (i) a written agreement of the Parties  
26 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful  
27 motion of any Party and the entry of a modified Consent Judgment by the Court thereon.

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1 **12. OTHER TERMS**

2 **12.1 No Other Agreements**

3 This Consent Judgment contains the sole and entire agreement and understanding of the  
4 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
5 negotiations, commitments and understandings related hereto. No representations, oral or  
6 otherwise, express or implied, other than those contained herein have been made by any party  
7 hereto. No other agreements addressing compliance with Proposition 65 as to the Covered  
8 Products not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind  
9 any of the Parties.


10 **12.2 Construction**

11 The Parties, including their counsel, have participated in the preparation of this Consent  
12 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent  
13 Judgment was subject to revision and modification by the Parties and has been accepted and  
14 approved as to its final form by all Parties and their Counsel. Accordingly, any uncertainty or  
15 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
16 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
17 agrees that any statute or rule of construction providing that ambiguities are to be resolved  
18 against the drafting Party should not be employed in the interpretation of this Consent Judgment  
19 and, in this regard the Parties hereby waive California Civil Code section 1654.

20 **13. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment on behalf of their  
22 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
23 Consent Judgment.

24 Dated: Feb 6, 2019 \_\_\_\_\_

  
K Randy Moore (Feb 6, 2019)  
Safe Products for Californians, LLC  
By: Randy Moore, Operating Manager

27 Dated: \_\_\_\_\_

\_\_\_\_\_  
Terra Origin Inc.  
By: \_\_\_\_\_

1 **12. OTHER TERMS**

2 **12.1 No Other Agreements**

3 This Consent Judgment contains the sole and entire agreement and understanding of the  
4 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
5 negotiations, commitments and understandings related hereto. No representations, oral or  
6 otherwise, express or implied, other than those contained herein have been made by any party  
7 hereto. No other agreements addressing compliance with Proposition 65 as to the Covered  
8 Products not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind  
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16 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
17 agrees that any statute or rule of construction providing that ambiguities are to be resolved  
18 against the drafting Party should not be employed in the interpretation of this Consent Judgment  
19 and, in this regard the Parties hereby waive California Civil Code section 1654.

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21 The undersigned are authorized to execute this Consent Judgment on behalf of their  
22 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
23 Consent Judgment.

24 Dated: \_\_\_\_\_

\_\_\_\_\_  
Safe Products for Californians, LLC  
By: Randy Moore, Operating Manager

25  
26  
27 Dated: Feb. 5, 2019

\_\_\_\_\_  
Terra Origin Inc.  
By: Renee Reynolds, Chief Financial Officer